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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

10 KIRBY SPENCER,

Case No. 2:14-cv-01646-RFB-CWH

11 Plaintiff,

12 v.

JOINT SUBMISSION ON DISCOVERY

13 KOHL'S DEPARTMENT STORES, INC.,

**SPECIAL SCHEDULING REVIEW
REQUESTED**

14 Defendant.

16 The parties having held a FRCP 26(f) meeting and LR 26-1(e) on December 11, 2014, and
17 attended by CRAIG K. PERRY, ESQ. of CRAIG K. PERRY & ASSOCIATES, for Plaintiff,
18 KIRBY SPENCER; JORDAN T. SMITH, Esq. of PISANELLI BICE, PLLC, and MICHAEL A.
19 INNES of KELLEY, DRYE, & WARREN LLP (pro hac vice forthcoming) for Defendant
20 KOHL'S DEPARTMENT STORES, INC. ("Kohl's") jointly submit their respective positions as to
21 the timing of discovery (if any) in the above captioned case.

24 **I. INFORMATION PURSUANT TO FEDERAL RULE OF CIVIL
25 PROCEDURE 26(f)**

26 **A. LIMITATIONS ON DISCOVERY**

27 As an initial matter, and as fully set forth in Kohl's Motion to Stay ("the Motion") filed on
28 December 24, 2104 (Dckt. No. 10), Kohl's respectfully submits that any discovery in this action

1 should be stayed pending the ruling of the Federal Communications Commission (“the FCC”) on
2 two petitions that necessarily implicate issues to be decided by this Court and that will inform the
3 scope of discovery (or determine whether the case should proceed at all). The parties discussed
4 the substance of the Motion to Stay prior to its filing. Plaintiff declined to consent to the relief
5 requested, and intends to oppose the Motion to Stay. As such, while it is Plaintiff’s position that
6 discovery should move forward, Kohl’s respectfully submits that any discovery should be stayed
7 pending the FCC’s ruling on the pending petitions.

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9 **B. CHANGES TO BE MADE IN THE TIMING, FORM, OR REQUIREMENTS
10 FOR DISCLOSURES**

11 Plaintiff proposes exchanging the information required by Fed R. Civ. P. 26(a)(1) by
12 January 13, 2015; whereas Kohl’s respectfully submits that all discovery (including initial
13 disclosures) should be stayed pending the FCC’s ruling on the pending petitions. *See generally,*
14 Def.’s Motion to Stay (Dckt. No. 10).

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16 **C. SUBJECTS ON WHICH DISCOVERY MAY BE NEEDED**

17 Plaintiff anticipates engaging in discovery permitted by the Federal Rules Civil Procedure,
18 including but not limited to, interrogatories, requests for admission, requests for production,
19 requests for inspection and depositions.

20 It is Kohl’s position, however, that discovery should be stayed for the reasons set forth in
21 its pending Motion to Stay. Def.’s Motion to Stay (Dckt. No. 10). Indeed, as set forth more fully
22 in Kohl’s Motion to Stay, two petitions before FCC necessarily implicate issues to be decided by
23 this Court and will inform the scope of discovery (or determine whether the case should proceed at
24 all).

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D. ISSUES ABOUT DISCLOSURE OF ELECTRONICALLY STORED INFORMATION

The parties do not anticipate any issues surrounding the disclosure of electronically stored information.

E. ISSUES ABOUT CLAIMS OF PRIVILEGE

The parties do not anticipate any issues surrounding the claims of privilege or of protection as trial-preparation materials.

F. OTHER ORDERS THAT THE COURT SHOULD ISSUE

If this action is not stayed, the parties anticipate entering into a stipulated confidentiality agreement and protective order.

II. INFORMATION PURSUANT TO LR 26-1(e)(1)

As set forth in the Motion to Stay, it is Kohl's position that no discovery should occur.

Plaintiff proposes to the court the following discovery plan:

(a) **Discovery:** Discovery will take 180 days, measured from November 17, 2014, which is the date of filing of the answer by Defendant Kohl's Department Stores, Inc. This means all discovery must be commenced in time to be completed by May 15, 2015.

(b) **FRCP 26(a)(2) Disclosures – Experts:** Disclosure of experts shall proceed according to FRCP 26(a)(2) and LR 26-1(e). [60 days before discovery cut-off date and rebuttal 30 days after initial disclosure]

- (i) The disclosure of experts and expert reports shall occur on March 16, 2015;
 - (ii) The disclosure of rebuttal experts and their reports shall occur on April 15, 2015.

1 **(c) Amendments to the Pleading and/or Adding of Parties:**

2 The final date for filing motions to amend the pleadings or to add parties shall be February
3 13, 2015. [not later than 90 days prior to discovery cut-off date]

4 **(d) Interim Status Reports:**

5 Kohl's proposes that the parties provide the Court with a joint interim status report
6 regarding the status of the FCC petitions on a monthly basis. In the event that the FCC renders a
7 decision on the petitions, then the parties shall file a joint letter advising the Court of the same,
8 and articulating their respective positions as to the impact on the instant litigation.

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10 Plaintiff proposes that the parties shall file the interim status report required by LR 26-3 by
11
12 March 16, 2015. [not later than 60 days before discovery cut-off]

13 **(e) Dispositive Motions:**

14 Plaintiff proposes that dispositive motions should be filed no later than June 15, 2015.
15 [not later than 30 days after discovery cut-off date]

16 It is Kohl's position that it is premature to set a date for the filing of dispositive motion as
17 it has moved to stay the action.

18 **(f) Settlement:**

19 It is Plaintiff's position that the parties are not presently engaging in settlement discussion.
20 Kohl's is willing to discuss the possibility of early resolution.

21 **(g) Pretrial Orders:**

22 It is Plaintiff's position that the joint pre-trial order and the accompanying disclosures
23 required by FRCP 26(a)(4) be filed by July 15, 2015. [not later than 30 days after the date set for
24 filing dispositive motions or, if motions filed, then 30 days after decision on dispositive motions]

1 It is Kohl's position that it is premature to set a date for the filing of pretrial orders as it has
2 moved to stay the action.

3 **(h) Court Conference:**

4 The parties do not request a conference with the Court before entry of the scheduling order.

5 **(i) Later Appearing Parties:**

6 A copy of this discovery plan and scheduling order shall be served on any person served
7 after it is entered, or if additional defendants should appear, within five (5) days of their first
8 appearance. This discovery plan and scheduling order shall apply to such later-appearing parties
9 unless the Court, on motion and for good cause shown, orders otherwise.
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Dated this 2nd day of January, 2015

Dated this 2nd day of January, 2015.

Submitted by:

CRAIG K. PERRY & ASSOCIATES

/s/ Craig K. Perry, Esq.

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Attorneys for Defendant

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

DATED: _____

CASE NO.: Case No. 2:14-cv-01646-RFB-CWH